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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,372	03/26/2004	George T. Domizio	03-284-2	2082
34704	7590	09/21/2005	EXAMINER	
BACHMAN & LAPOINTE, P.C.			REESE, DAVID C	
900 CHAPEL STREET			ART UNIT	
SUITE 1201			PAPER NUMBER	
NEW HAVEN, CT 06510			3677	

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/811,372

Applicant(s)

DOMIZIO, GEORGE T.

Examiner

David C. Reese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to Applicant's amendment filed 6/27/2005.

#### ***Status of Claims***

- [1] Claims 1-11, 13-15 are pending.

#### ***Election/Restrictions***

- [2] This application contains claim 12 drawn to an invention nonelected without traverse in Paper No. 6/27/2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

#### ***Claim Objections***

- [3] Claim(s) 2 and 11 were previously objected to because of informalities. Applicant has successfully addressed these issues in the amendment filed on 6/27/2005. Accordingly, the objection(s) to the claim(s) have been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

- [4] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[5] Claims 1-3, 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gavin US-6,789,776 in view of Kanie US-5,551,817.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

Gavin teaches of a cast-in anchor attachment apparatus that comprises of a threaded anchor including an annular member whereby both shearing and receiving a tool for removal of the annular member are possible.

However, Gavin fails to disclose expressly a resilient section at the forefront of the annular member.

Kanie teaches of a fastener for attaching in one direction, which encompasses such a resilient section at the forefront of the stud.

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify the cast-in anchor attachment apparatus taught by Gavin, to incorporate a resilient member as taught by Kanie, in order to allow the anchor to remain more secure during the mold over process, as well as providing a more secure environment for the anchor during such manipulations as tightening the connection between the anchor and wall of which it is adjacent.

Now as for Claim 1, Gavin discloses a cast-in anchor attachment apparatus comprising:  
a head portion having a central portion (Gavin in view of Kanie, substituting the head portion 25 in Fig. 1 of Kanie for 54 in Fig. 8 of Gavin), a rounded end extending from one end of

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the central portion (rounded portion at the top of 24 in Fig. 1 of Kanie) and at least one wing flexibly extending laterally with respect to a longitudinal axis of the central portion (24 in Fig. 1 of Kanie); and

a thread protector (50 in Fig. 8 of Gavin) comprising a threaded member (20 in Fig. 8 of Gavin) having a slotted head (92 in Fig. 9 of Gavin), the thread protector being releasably connected to the central portion (Fig. 8 of Gavin).

As for Claim 2, wherein the central portion has a solid base at an end opposite to the rounded end (23 in Fig. 1 of Kanie), and wherein the slotted head of the thread protector is releasably connected to the solid base (Fig. 8 to Fig. 7, as well as from part 3, lines 35-36, and the last paragraph of claim # 4 of Gavin).

As for Claim 3, wherein the at least one wing comprises at least two wings extending laterally from opposite sides of the central portion (24 in Fig. 1 of Kanie).

As for Claim 6, wherein the at least one wing extends outerwardly and rearwardly from the rounded head (24 in Fig. 1 of Kanie).

As for Claim 7, wherein the at least one wing is hingedly mounted to the central portion at a hinged connection (the hinge following 24 to the top in Fig. 1 of Kanie).

As for Claim 8, wherein a forward facing portion of the at least one wing extends forward from the hinge connection (forward facing portion of the wing, forward of the angle formed between 24 and the top in Fig. 7 of Kanie), and a rearward facing portion of the at least one wing extends rearwardly from the hinge connection (rearward facing portion of the wing, 24 in Fig. 7 of Kanie).

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[6] Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gavin US-6,789,776 in view of Kanie US-5,551,817, and in further view of Olson, Jr., US-6,406,236.

Gavin in view of Kanie teach of the above claims.

However, Kanie fails to disclose expressly ridges on the outer surface of at least one wing.

Olson, Jr. teaches of a panel fastener whereby on each wing are a number of ridges or ribs. The purpose of these ridges or ribs is to help support the fastener as it is inserted through a wall or panel.

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify the resilient means as taught by Kanie, to incorporate a set of ridges or ribs as taught by Olson, Jr., in order to create a more stable connection between the wings of the resilient means and the hole by which it is being inserted to via ridges or ribs; whose main purpose is fundamentally centered upon their use as primary support structures or possessing the ability to help assist holding structures.

[8] Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gavin US-6,789,776 in view of Kanie US-5,551,817, and in further view of Chang, US-6,679,712.

Gavin in view of Kanie teach of the above claims.

However, Kanie fails to disclose expressly of the resilient means having a longitudinal slot disposed along the central portion.

Chang teaches of a fixture for an electrical device that encompasses a resilient means including a groove as shown (143 in Fig. 6).

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At the time of invention, it would have been obvious to one of ordinary skill in the art to modify the resilient means as taught by Kanie, to incorporate a longitudinal slot as taught by Chang in his resilient means, in order to, as Chang states, (“let the wedge portion 142 move elastically while passing through the through hole 131”). Thus, it is a design choice that will allow a more efficient passing through of the resilient means by improving the elasticity and flexibility of the means.

[9] Claim 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gavin US-6,789,776 in view of Kanie US-5,551,817, and in further view of Allen, 5,667,443.

Gavin in view of Kanie teach of the above claims.

However, Gavin fails to disclose expressly an annular member that comprises a longitudinal cutout positioned along the thread protector.

Allen teaches of a bolt including a cleaning thread point tip involving a longitudinal cutout, which can be viewed as (22 in Fig. 1 of Allen).

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify the annular member as taught by Gavin, to incorporate a longitudinal cutout as taught by Allen; in order to, as Allen states in his summary of the invention, (“enable the material, when the fastener is threaded into the port, to receive the foreign material”). Thus, the longitudinal cutout is an additional design choice to the original thread protecting qualities of the annular member, allowing another characteristic of keeping the threads clean. The longitudinal cutout as shown by Allen extends from a rear edge of the thread protector toward the slotted head, and

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ends before reaching the slotted head, as stated in Claims 10 and 11 of the applicant (22 in Fig. 1 of Allen).

[10] Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gavin US-6,789,776 in view of Kanie US-5,551,817, and in further view of Angellotti, US-4,715,185.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

As for Claim 13, Gavin in view of Kanie teach of the above claims.

The difference between the claim and Gavin in view of Kanie is the claim recites: two wings hingedly mounted to the central portion at hinged connections. Angellotti discloses a resilient means (head portion) similar to that of Kanie. In addition, Angellotti further teaches of two wings hangedly mounted to the central portion at hinged connections, and wherein forward facing portions of each of things extend forward from the hinge connections and are space from each other, and rearward facing portions of each of the wings extend rearwardly from the hinge connections. It would have been obvious to one of ordinary skill in the art, having the disclosures of Kanie and Angellotti before him at the time the invention was made, to modify the resilient means of Kanie to include another embodiment incorporating said structure as in Angellotti. One would have been motivated to make such a combination because one would want to assist the resilient means in its initial entry into a wall, as taught by Angellotti, beginning



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in col. 2, with line 66, "In the present invention, the tip 23 of the shank 22 is split so as to allow the arms 26 to be deflected inwardly into contact with the shank..."

Re: Claim 14, Angellotti discloses further comprising a slot (inside 23) extending along the central portion between the hinge connections.

Re: Claim 15, Angellotti discloses wherein the head portion has an axis and the central portion has a side wall substantially parallel to the axis, wherein the at least one wing is pivotable relative to the central portion between a compressed position wherein the at least one wing is substantially parallel to the side wall and an extended position wherein the at least one wing is angle away from the side wall, and wherein an outer wall of the at least one wing is aligned with an outer wall of the solid base when the at least one wing is in the compressed position (beginning in col. 2, with line 66, "In the present invention, the tip 23 of the shank 22 is split so as to allow the arms 26 to be deflected inwardly into contact with the shank...")

### ***Response to Arguments***

[11] Applicant's arguments filed 6/27/2005 regarding rejections under 35 U.S.C. 103 regarding claims 1-11 have been fully considered but they are not persuasive. The applicant begins by stating that the suggestion to combine Gavin with Kanie is invalid since Kanie is from a very different field of technology having nothing to do with the subject matter of the claims of the application. The examiner disagrees. In response to Applicant's argument that Kanie is nonanalogous art, it has been held that the determination that a reference is from a nonanalogous art is twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In re Wood, 202 USPQ 171, 174. In this case,

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Kanie is indeed relevant since the invention, itself, is in the subject matter of fasteners, and more specifically, fastening a resilient section to a wall (a wall quite similar to 26 of the instant application). Kanie discloses of a fastener for attaching in one direction; the head 20 of the instant application as shown from steps 1-3 in Figs. 1-3 by applicant maintains the same purpose (fastening in one direction).

Furthermore, in response to Applicant's argument that there is no suggestion to combine the references, the examiner disagrees, as the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969. In this case, substituting a resilient section such as 24 of Kanie for the straight pin section 54 of Gavin, allows the head of the pin to be inserted into a wall as provided by 5 in Kanie, similar to 26 of that of applicant. Furthermore, when the head is sheared of as shown in Figure 4 of the instant application, all one must do to see the comparable attributes is to view Fig. 7 of Gavin. In both situations (the instant application, and Gavin in view of the head portion of Kanie), the head portion has enabled proper securement of the threaded insert on a mold wall, so that when the mold wall has been removed, the head portion breaks away leaving the threaded insert within the molded article. The difference in head structure is easily understood to one

skilled in the art to be attributed as to what type of substrate and how the threaded insert is being fastened to said substrate before the filing of the mold.

Continuing with that above, it is not required that the prior art disclose or suggest the properties newly-discovered by an applicant in order for there to be a prima facie case of obviousness. *See In re Dillon*, 919 F.2d 688, 16 USPQ2d 1897, 1905 (Fed. Cir. 1990). Moreover, as long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor. *See In re Beattie*, 974 F.2d 1309, 24 USPQ2d 1040 (Fed. Cir. 1992); *In re Kronig*, 539 F.2d 1300, 190 USPQ 425 (CCPA 1976) and *In re Wilder*, 429 F.2d 447, 166 USPQ 545 (CCPA 1970). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

The argument that the applicant makes about Gavin making the remains of the stud easily removable from the mold wall after molding is complete is irrelevant, as in both the instant application, as well as that disclosed by Gavin, the head is sheared off (Fig. 7 of Gavin compared with Fig. 4 of applicant) only leaving the thread protector and threaded insert in both. The purpose of the head in both situations is to provide stabilization during the mold process.

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The same argument above concerning suggestion to combine, analogous art, and reasons for motivation can be applied to that refuted by applicant concerning the combination of art with respect to claims 4 and 5. The purpose of the Olson, Jr., reference is to show the saturation of the art in which ridges or ribs are used on resilient means to help provide a more stable connection between the wings of the resilient means and the hole by which it is being inserted. The purpose of the Chang reference is to show that by providing a longitudinal slot in the resilient means it, by the very nature of said structure allows for easier insertion of the resilient means into the wall. Both prior art, in connection with the head provided by Kanie when substituted for the head of Gavin will provide results emulating the currently claimed invention.

Lastly, with respect to Claim 8, applicant argues that the head of Kanie does not anticipate the instant claim. The examiner disagrees, for as currently claimed, Kanie does indeed anticipate said structure, for there is structure extending forwardly from the hinge connection.

Arguments concerning newly submitted claims 13-15 are considered moot to new grounds of rejection for said new claims.

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**Conclusion**

[12] Applicant's amendment (newly submitted claims) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

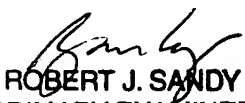
[13] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272- 7082. The examiner can normally be reached on 7:30 am - 6:00 pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. **Please also note the change in the fax phone number to (571) 273-8300 for the organization where this application or proceeding is assigned.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,  
David Reese  
Assistant Examiner  
Art Unit 3677

DCR

  
ROBERT J. SANDY  
PRIMARY EXAMINER